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11 Specially Appearing for Defendant
12 CHARMING SHOPPES OF DELAWARE, INC.

13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 SHAMEIKA MOODY, as an individual
18 and on behalf of others similarly situated,

19 Plaintiff,

20 vs.

21 CHARMING SHOPPES OF
DELAWARE, INC., a corporation, and
22 DOES 1 through 20, inclusive,

23 Defendant.

Case No. C 07-06073 MHP

**DECLARATION OF ALBERT HUANG IN
SUPPORT OF DEFENDANT CHARMING
SHOPPES OF DELAWARE, INC.'S
REPLY TO MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION**

Date: February 11, 2008
Time: 2:00 p.m.

[SPECIAL APPEARANCE ONLY]

1 I, Albert Y. Huang, declare as follows:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California and am a member in good standing of the State Bar of California. I am an attorney
4 with the law firm of Morgan, Lewis & Bockius LLP ("Morgan Lewis"). Morgan Lewis
5 represents defendant Charming Shoppes of Delaware, Inc. in this action. I have personal
6 knowledge of the facts set forth herein and could and would competently testify thereto.

7 2. Attached as Exhibit 1 is a true and correct copy of the Answer filed on January 10,
8 2008 in *Shameika Moody v. Lane Bryant, Inc.* (Case No. CGC-07-469900) pending in the
9 Superior Court of the State of California for the County of San Francisco. Lane Bryant, Inc. does
10 not assert an affirmative defense of lack of personal jurisdiction in the Answer.

11 I declare under penalty of perjury under the laws of the United States that the foregoing is
12 true and correct.

13 Executed on January 28, 2008, at Los Angeles, California.

14
15 
16 Albert Y. Huang

EXHIBIT 1

01/10/08

FIRST LEGAL

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Attorneys for Defendant
LANE BRYANT, INC.

ENDORSED
FILED
San Francisco County Superior Court

JAN 10 2008

GORDON PARK-LI, Clerk
BY: ROSSALY E. DE LA VEGA NAVARRO
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SHAMEIKA MOODY, as an individual
and on behalf of others similarly situated,

Plaintiff,

vs.

LANE BRYANT, INC., a corporation, and
DOES 1 through 20, inclusive.

Defendants.

Case No. CGC-07-469900

**DEFENDANT LANE BRYANT'S ANSWER
TO PLAINTIFF'S UNVERIFIED
COMPLAINT**

GENERAL DENIAL

Defendant Lane Bryant, Inc. ("Defendant") hereby answers Plaintiff Shameika Moody's ("Plaintiff") unverified Complaint (the "Complaint") pursuant to California Code of Civil Procedure Section 431.30, by denying generally each and every allegation contained in the Complaint and by asserting the following affirmative defenses:

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
LOS ANGELES

1-LA/973386.2

ANSWER TO COMPLAINT

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AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE****(Failure to State a Cause of Action)**

1. The Complaint and each alleged cause of action fails to state a claim upon which relief can be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE**(Statutes of Limitations)**

2. The claims of Plaintiff and some or all purported class members are barred or limited by the applicable statute(s) of limitations, including but not limited to, California Code of Civil Procedure sections 338, 339, and 340, and California Business & Professions Code section 17208.

THIRD AFFIRMATIVE DEFENSE**(Failure to Exhaust Internal and Administrative Remedies)**

3. The claims of Plaintiff and of each putative class member she purports to represent are barred to the extent that they failed to exhaust their internal and/or administrative remedies.

FOURTH AFFIRMATIVE DEFENSE**(Lack of Standing)**

4. The claims of Plaintiff and the class she purports to represent are barred in whole or in part because Plaintiff fails to satisfy the prerequisites for class certification, lacks standing under Business and Professions Code section 17204, and the California Labor Code, to bring these claims, and therefore cannot represent the interests of others as to each of the purported causes of action.

FIFTH AFFIRMATIVE DEFENSE**(Not Appropriate For Class Action)**

5. The types of claims alleged in the Complaint on behalf of Plaintiff and the purported class are matters in which individual questions predominate and, accordingly, Plaintiff fails to satisfy any of the prerequisites for class certification as to any cause of action.

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SIXTH AFFIRMATIVE DEFENSE**(Claims Not Common or Typical)**

6. The claims alleged by the named Plaintiff are neither common to nor typical of those, if any, of the alleged class Plaintiff purports to represent.

SEVENTH AFFIRMATIVE DEFENSE**(Failure to Mitigate)**

7. Plaintiff's monetary claims, and the claims of the putative members of the purported class are barred, in whole or in part, because they have not appropriately or adequately mitigated their damages, if any.

EIGHTH AFFIRMATIVE DEFENSE**(Inadequate Representatives)**

8. The Complaint fails, to the extent it asserts a class action, because Plaintiff is not an adequate representative of the purported class.

NINTH AFFIRMATIVE DEFENSE**(Action Unconstitutional)**

9. Prosecution of a representative action and certification of the alleged class as representative of the general public under California Business and Professions Code section 17200, based upon the facts and circumstances of this case, would be an unconstitutional denial of Defendant's right to due process under the Fourteenth Amendment to the United States Constitution and the California Constitution.

TENTH AFFIRMATIVE DEFENSE**(Superiority)**

10. A class claim under California Business and Professions Code § 17200 *et seq.* is not maintainable for, among other reasons, failure to satisfy the requirement of superiority.

ELEVENTH AFFIRMATIVE DEFENSE**(Laches)**

11. The claims of Plaintiff and some or all purported class members, including claims for damages, are barred in whole or in part by the doctrine of laches.

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TWELFTH AFFIRMATIVE DEFENSE**(Estoppel)**

12. The claims of Plaintiff and some or all purported class members are barred in whole or in part by their own conduct, actions, and/or inactions, which amount to and constitute an estoppel of the causes of action and any relief sought thereby.

THIRTEENTH AFFIRMATIVE DEFENSE**(Adequate Remedy At Law)**

13. The claims of Plaintiff and of each purported class member pursuant to California Business and Professions Code section 17200, and the sought after injunctive and restitution remedies, are barred in light of the fact that Plaintiff and each putative member of the class she purports to represent have an adequate remedy at law.

FOURTEENTH AFFIRMATIVE DEFENSE**(Waiver of Claims)**

14. The claims of Plaintiff and some or all purported class members are barred in whole or in part because such claims have been waived, discharged, and/or abandoned.

FIFTEENTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

15. The claims of Plaintiff and some or all purported class members are barred in whole or in part by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE**(Accord and Satisfaction)**

16. The claims of Plaintiff and of each purported class member are barred in whole or in part by the doctrine of accord and satisfaction, and payment.

SEVENTEENTH AFFIRMATIVE DEFENSE**(Failure to Perform Conditions)**

17. Plaintiff and some or all putative class members she purports to represent failed to perform the conditions necessary to give rise to any obligation on the part of Defendant for the payment of wages alleged in the Complaint.

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EIGHTEENTH AFFIRMATIVE DEFENSE**(Setoff and Recoupment)**

18. If any damages have been sustained by Plaintiff and/or any member of the class she purports to represent, although such is specifically denied, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all overpayments and/or all obligations of Plaintiff or putative class members owed to Defendant against any judgment that may be entered against Defendant.

NINETEENTH AFFIRMATIVE DEFENSE**(Good Faith)**

19. Any wages that were allegedly unpaid or withheld are the subject of a bona fide, good faith dispute and thus should not be subject to the imposition of penalties.

TWENTIETH AFFIRMATIVE DEFENSE**(Waiting Time Penalties)**

20. The Complaint fails to state a claim for waiting time penalties under Labor Code Section 203 to the extent that no such penalties can continue after the commencement of an action for the penalties.

TWENTY-FIRST AFFIRMATIVE DEFENSE**(Excessive Fine)**

21. An award of penalties against Defendant under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

TWENTY-SECOND AFFIRMATIVE DEFENSE**(Release)**

22. The claims of some or all purported class members are barred or limited in whole or in part because such claims have been released.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Avoidable Consequences)

23. The claims of Plaintiff and some of the putative class members are barred, or damages limited, by the doctrine of avoidable consequences because Plaintiff and others could have avoided the alleged damages by reasonable effort, but failed to do so.

RESERVATION OF RIGHTS

Defendant reserves the right to assert such additional affirmative defenses that may appear and prove applicable during the course of this litigation.

WHEREFORE, Defendant prays for judgment that:

1. The Court deny Plaintiff's request to certify this action as a class action;
2. Plaintiff take nothing by reason of the Complaint on file herein, and that said Complaint be dismissed with prejudice;
3. Judgment be entered in favor of Defendant and against Plaintiff on all causes of action;
4. Defendant be awarded their costs of suit incurred herein;
5. Defendant be awarded attorneys' fees incurred by this action; and,
6. The Court award Defendant such other and further relief as it deems just and proper.

Dated: January 10, 2008

MORGAN, LEWIS & BOCKIUS LLP
JOHN S. BATTENFELD

By 

John S. Battenfeld
Attorneys for Defendant
LANE BRYANT, INC.

01/10/08

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PROOF OF SERVICE

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, California 90071-3132.

On January 10, 2008, I served the within document(s):

DEFENDANT LANE BRYANT'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- ☐ by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth below.
- ☐ by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on January 10, 2008, at Los Angeles, California.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.



CARIDAD FRUTOS

01/10/08

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